Supreme Court, U.S.
FILED
MAY 9 2002
OFFICE OF THE CLERK

No. 01-1380

In the Supreme Court of the United States

JAMES T. SINYARD AND MONIQUE T. SINYARD,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether petitioners may exclude from their gross income the portion of the proceeds of a lawsuit brought under the Age Discrimination in Employment Act of 1967 that was paid to their attorneys by the defendant in the lawsuit.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 268 F.3d 756. The opinion of the Tax Court (Pet. App. 18-31) is reported at 76 T.C.M. (CCH) 654.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 2001. The petition for rehearing was denied on December 17, 2001 (Pet. App. 32). The petition for a writ of certiorari was filed on March 15, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1989, petitioner James T. Sinyard joined two class action lawsuits against his former employer, IDS Financial Services, Inc.[1] Pet. App. 2. The suits were certified as class actions under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.* Pet. App. 18-19. Petitioner entered into a contingency fee agreement with his attorneys that provided that (*id.* at 20):

> in the event of a recovery, Winthrop and Weinstine [the attorneys] will be paid one-third (1/3) of the monetary amount obtained in the lawsuit, whether by settlement or jury award.
>
> * * * * *
>
> In the event that an award of attorney's fees is received by you as a plaintiff, then that award will be considered as part of your total recovery with one-third of the amount to be paid to Winthrop and Weinstine and the remainder to be retained by you.

In August 1992, the district court approved a comprehensive settlement of the class actions. Pet. App. 23. Under the terms of the settlement, IDS agreed to pay $35 million to resolve all claims in the suits, including claims for litigation costs and attorney's fees. *Id.* at 22-23. After deducting costs of $1.7 million, the settlement proceeds were allocated one-third to compensation for tort injuries, one-third to lost wages and one-third "for payment of attorneys' fees pursuant

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[1] Petitioner Monique Sinyard is a party to this case solely because she filed a joint federal tax return with her husband James for the year on issue. References in this brief to "petitioner" are therefore to James Sinyard.

to 29 U.S.C. § 626(b) and 29 U.S.C. § 216(b)." Pet. App. 3, 24. IDS paid the attorney's fees portion of the total settlement amount ($11,166,666) directly to Winthrop & Weinstine. *Id.* at 4.

The portion of the total settlement proceeds attributable to petitioner was $862,906. Of that amount, $252,608 was the attorney's fees allocable to the taxable portion of petitioner's recovery.[2] On his 1992 federal income tax return, petitioner did not report as income the $252,608 paid to his attorneys. Pet. App. 24-25.

2. The Commissioner of Internal Revenue determined that the $252,608 in proceeds that were paid to petitioner's attorneys on petitioner's behalf were includable in his gross income. The Commissioner further determined that the amount paid to petitioner's attorneys was deductible as an itemized deduction under 26 U.S.C. 67. Pet. App. 25. Because miscellaneous itemized deductions, including deductions for attorney's fees, are not allowable for purposes of computing the alternative minimum tax (AMT), however, the Commissioner determined a deficiency in petitioner's income tax for 1992. *Id.* at 5; see 26 U.S.C. 56(b)(1)(A).

3. The Tax Court upheld the deficiency (Pet. App. 25-31), and the court of appeals affirmed (Pet. App. 1-16). The court of appeals explained that the satisfaction of petitioner's attorney's fee obligation through a payment made by the defendant in the litigation constitutes gross income to petitioner (*id.* at 5-6):

> If A owes B a debt, and C pays the debt on A's behalf, it is elementary that C's payment is income

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[2] A portion of the settlement proceeds was treated as damages received on account of personal injuries, excludable from gross income under 26 U.S.C. 104(a)(2). See Pet. App. 5.

> to A as well as to B. Here, James Sinyard had contracted to pay Winthrop & Weinstine one-third of what he might receive in settlement. His obligation to the law firm was satisfied by IDS. The payment was therefore income to him. "The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed." *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716, 729 (1929).

The court of appeals rejected petitioner's argument that the attorney's fees should be excluded from his gross income on the theory that the defendant, rather than petitioner, was primarily liable to pay them. The court of appeals held that argument to be "contrary to prior case law and the plain language of the ADEA statute. Under the ADEA, attorney's fees are available to prevailing plaintiffs, not to plaintiff's counsel." Pet. App. 6-7, citing 29 U.S.C. 626(b). The court of appeals added (Pet. App. 7 (citations omitted)):

> In our case, the Sinyards bound themselves to pay Winthrop & Weinstine one-third of what they received. When IDS satisfied this obligation, the Sinyards were so much the richer. That they never laid hands on the money paid to the lawyers does not obliterate their constructive receipt. The Sinyards are therefore liable for the deficiency resulting from the workings of the AMT.

Petitioner further argued that he was a resident of Alabama when he entered into the fee agreement with his attorneys and that the attorney's fees should be excluded from his gross income under *Cotnam* v. *Commissioner*, 263 F.2d 119 (5th Cir. 1959). In *Cotnam*, the Fifth Circuit held that, under Alabama law, an attorney with a contingent fee agreement takes an equitable assignment of a portion of the recovery and

that the amount thus recovered by the attorney is income belonging to the attorney and not to the client. *Id.* at 125. The court of appeals rejected reliance on *Cotnam* in this case. The court stated that (Pet. App. 8):

> We do not dispute the old Fifth Circuit's statement of Alabama law, but we do not see how the existence of a lien in favor of the taxpayer's creditor makes the satisfaction of the debt any less income to the taxpayer whose obligation is satisfied. Like the Tax Court, we decline to follow *Cotnam*.

Judge McKeown dissented. She concluded that attorneys' fees under the ADEA are awarded directly to the attorneys, not to the plaintiffs, and therefore should not have been included in petitioner's gross income. Pet. App. 9-16.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or other courts of appeals. Further review is therefore not warranted.

1. The Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, provides for an award of attorneys' fees to successful plaintiffs by incorporating the remedial provisions of the Fair Labor Standards Act ("FLSA"). See *McKennon* v. *Nashville Banner Publishing Co.*, 513 U.S. 352, 357 (1995). The ADEA specifies that (29 U.S.C. 626(b)):

> The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section.

Section 216(b), which is referenced in this provision, contains the FLSA's provision for the award of attorneys' fees. In pertinent part, that statute provides (29 U.S.C. 216(b) (emphasis added)):

> Any employer who violates the provisions of section 206 or section 207 [of the FLSA] shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate * * *. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer * * *. *The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.*

In the absence of such a fee-shifting statute, successful plaintiffs would have to pay attorneys' fees directly from the proceeds of the judgment. An award under the ADEA fee-shifting provision is thus an additional statutory award designed to satisfy the obligation owed by the plaintiff to his attorneys for their services. Pet. App. 8.

The court of appeals correctly concluded that this additional statutory award represents income to the plaintiff. Pet. App. 5-6. It is well established that, when a payment is made by a third party to satisfy a taxpayer's obligation, the amount of that payment is includable in the taxpayer's gross income. This is because, even if the taxpayer never receives the payment, he receives the economic benefit of it. As this

Court concluded in *Old Colony Trust Co.* v. *Commissioner*, 279 U.S. 716, 729 (1929), "[t]he discharge by a third person of an obligation to him is equivalent to receipt by the person taxed." The court of appeals properly followed the reasoning and holding of *Old Colony Trust Co.* in this case.

2. a. Petitioner contends (Pet. 9-13) that a uniform national rule should be adopted to determine the taxation of attorneys' fees recovered in contingent fee litigation. In a line of cases involving contingent fee agreements, however, courts have emphasized that there are differences in the treatment of such fees under state law. Compare, *e.g.*, *Kenseth* v. *Commissioner*, 259 F.3d 881 (7th Cir. 2001) (under Wisconsin law, attorney did not have an ownership right in the proceeds of the client's lawsuit, and the entire proceeds were includable in gross income), with *Cotnam* v. *Commissioner*, 263 F.2d 119 (5th Cir. 1959) (under Alabama law, attorney acquired ownership of a portion of the client's cause of action, and the proceeds of that portion are thus excludable from the client's gross income).

The question presented in those state-law contingent fee cases, however, is not presented here. The attorneys' fees involved in this case were awarded under the fee-shifting provision of the ADEA. The petitioner's right to an award of those fees was created by federal, not by state, law. Pet. App. 17. Petitioner's attorneys had no right, under federal law, to share in the proceeds of this cause of action. Instead, this statutory recovery of fees was enacted for the very purpose of satisfying the plaintiff's obligation to compensate his attorneys. That payment thus represents income to petitioner under *Old Colony Trust Co.* v. *Commissioner*, 279 U.S. at 729. There is no conflict among the circuits concerning the ownership of this statutory

right to attorneys' fees that was resolved by the court of appeals in this case.

b. Moreover, the state-law question that petitioner seeks to pose would not itself warrant certiorari in any event. This Court has already denied two petitions for certiorari in cases where that issue was presented. *Coady* v. *Commissioner*, 213 F.3d 1187 (9th Cir. 2000), cert. denied, 532 U.S. 972 (2001); *Benci-Woodward* v. *Commissioner*, 219 F.3d 941 (9th Cir. 2000), cert. denied, 531 U.S. 1112 (2001); see also *Hukkanen-Campbell* v. *Commissioner*, 274 F.3d 1312 (10th Cir. 2001), petition for cert. pending, No. 01-1348.[3] To the extent that the petition for a writ of certiorari in this case purports to raise that state-law issue, it should be denied for the same reasons set forth in our brief in

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[3] Petitioner argued in the court below, in the alternative, that he was a resident of Alabama when he entered into the fee agreement, and that the attorneys' fees should be excludable under *Cotnam*. The court of appeals rejected that argument, stating that it "decline[d] to follow *Cotnam*." Pet. App. 8. The court of appeals had already decided the case, however, on the premise that the fees were paid under the fee-shifting provision of the ADEA and not under the fee agreement. *Id.* at 17. As petitioner himself acknowledges, "the fee provision in the ADEA constitutes the exclusive basis for payment of fees and supersedes any alternative fee arrangement by and between attorneys and their clients." Pet. 18 (citations omitted). The court's comment regarding *Cotnam* was thus not necessary to nor part of its ratio decidendi in this case. See *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959) ("[w]hile this Court decides questions of public importance, it decides them in the context of meaningful litigation * * * [resolution of the issue in conflict] can await a day when the issue is posed less abstractly").

opposition to the petition in *Benci-Woodward* v. *Commissioner*, *supra*.[4]

3. Petitioner argues (Pet. 14-17) that there is a conflict in the courts of appeals concerning application of the doctrine of anticipatory assignment of income to attorneys' fees. Under the doctrine of anticipatory assignment of income, a party who assigns a right to income "which has already accrued to him" must recognize the income and is not allowed to "escape all tax by giving away his right to income in advance of payment." *Helvering* v. *Horst*, 311 U.S. 112, 115, 116 (1940). Although that doctrine has been addressed in some of the state-law contingent fee cases (see *Baylin* v. *United States*, 43 F.3d 1451 (Fed. Cir. 1995)), the court of appeals did not rely on, or even discuss, the assignment of income doctrine in this case. Instead, the court relied on the fact that, under federal law, the fee award in this case was designed and applied to satisfy petitioner's financial obligation to his attorneys. Pet. App. 5-9. The assignment of income doctrine was thus not applied in this case.

4. Petitioner argues (Pet. 17-22) that including an award of attorneys' fees in gross income contravenes the legislative purposes of the ADEA. Petitioner complains that taxation of the proceeds received by successful ADEA plaintiffs under the AMT defeats Congress's purpose to make victims of age discrimination whole. This Court has held, however, that damages received in ADEA actions are to be included in gross income and are therefore taxable. *Commissioner* v. *Schleier*, 515 U.S. 323 (1995). The plain language of

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[4] We are providing herewith to petitioner a copy of the brief in opposition that we filed in *Benci-Woodward* v. *Commissioner*, *supra*.

the applicable statutes further specifies that petitioner's legal expenses constitute "miscellaneous itemized deductions" under 26 U.S.C. 67, and that, in computing the alternative minimum tax, "[n]o deduction shall be allowed * * * for any miscellaneous itemized deduction." 26 U.S.C. 56(b)(1)(A). The courts have consistently held that there is no basis for disregarding the plain language of these governing statutory provisions and that "equitable arguments cannot overcome the plain meaning of the [AMT] statute." *Alexander* v. *IRS*, 72 F.3d 938, 947 (1st Cir. 1995).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2002